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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/911,126	07/23/2001	Owen Jones	272PQ-C1	2925
7590	11/17/2004		EXAMINER	
Larson & Associates, P.C. 221 East Church Street Frederick, MD 21701-5405			MICHALSKI, JUSTIN I	
			ART UNIT	PAPER NUMBER
			2644	

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

9/9

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/911,126	JONES, OWEN
	<b>Examiner</b>	<b>Art Unit</b>
	Justin Michalski	2644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 23 July 2001.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-90 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 1-90 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date: _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-42, drawn to a noise cancellation system for a headset with noise cancellation circuitry located remotely from the headset, classified in class 381, subclass 71.6.
- II. Claims 43-46, drawn to noise cancellation system for a headset with noise cancellation circuitry contained within the headset, classified in class 381, subclass 71.6.
- III. Claims 47-72, drawn to a headset with noise cancellation circuitry partially contained within the headset and powering means remote from the headset for powering the circuitry in the headset, classified in class 381, subclass 71.6.
- IV. Claims 73-88, drawn to a noise cancellation system for a headset having noise cancellation circuitry partially contained within an external device and powering means for providing power to the circuitry within said device, classified in class 381, subclass 71.6.
- V. Claim 89, drawn to a noise cancellation system for a headset having an external noise cancellation circuitry, external powering means and crosstalk elimination means between the earphone and microphone, classified in class 381, subclass 1.

VI. Claim 90, drawn to a transient elimination circuit, classified in class 330, subclass 250.

The inventions are distinct, each from the other because of the following reasons:

Inventions I or II or III or IV or V and VI are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because it represents a headset with active noise cancellation, whereby the circuitry's response to transients are irrelevant to the circuitry's power connection means, location of the circuitry, ect. The subcombination has separate utility such as a general circuit for slowly charging or discarding active elements.

Inventions I-IV and V are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions have different effects because of the crosstalk elimination elements found in invention V, not found in inventions I-IV.

Inventions I-IV are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In

the instant case the different inventions have different modes of operation because of the different placement of the powering means and the noise cancellation circuitry.

Because these inventions are distinct for the reasons given above and the search required for Groups I-IV is not required for Group V, restriction for examination purposes as indicated is proper. In addition, the individual searches for Group I-IV would require different consideration throughout prosecution of the application, thereby requiring restriction.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper for Group V and Group VI.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin Michalski whose telephone number is (703)305-5598. The examiner can normally be reached on 8 Hours, 5 day/week.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bill Isen can be reached on (703)305-4386. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2644

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JIM

  
XU MEI  
PRIMARY EXAMINER